become effective pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6) thereunder.[8]

The Exchange has asked the Commission to waive the operative delay to permit the proposed rule change to become operative prior to the 30th day after filing. The Commission has determined that waiving the 30-day operative delay of the Exchange's proposal is consistent with the protection of investors and the public interest because such waiver will enable the Exchange to implement its proposed expansion of the Program contemporaneously with other exchanges,[9] and respond to increased customer demand for $1 strikes without delay.[10] Therefore, the Commission designates the proposal operative upon filing. The Commission expects that the Exchange will continue to monitor the trading volume associated with the additional options series listed as a result of this proposal and the effect of these additional series on market fragmentation and on the capacity of the Exchange's, OPRA's, and vendors' automated systems.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–NASDAQ–2009–025 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2009–025. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NASDAQ–2009–025 and should be submitted on or before April 14, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–6328 Filed 3–23–09; 8:45 am]

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[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. Nasdaq has met this requirement.

[9] *See* Securities Exchange Act Release No. 59587 (March 17, 2009) (SR–ISE–2009–04, SR–CBOE–2009–001, SR–NYSEArca–2009–10, and SR–NYSEALTR–2009–11) (Order Granting Accelerated Approval of Proposed Rule Changes, as Amended, to Expand the $1 Strike Program).

[10] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59590; File No. SR–Phlx–2009–21]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX, Inc. Related to the $1 Strike Price Program

March 17, 2009.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on March 16, 2009, NASDAQ OMX PHLX, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify Phlx Rule 1012 (Series of Options Open for Trading) to expand the Exchange's $1 Strike Price Program (the ''Program'').[4] The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The $1 Strike Price Program was initially approved on June 11, 2003, and was then extended several times until June 5, 2008. *See* Securities Exchange Act Release Nos. 48013 (June 11, 2003), 68 FR 35933 (June 17, 2003) (SR–Phlx–2002–55); 49801 (June 3, 2004), 69 FR 32652 (June 10, 2004) (SR–Phlx–2004–38); 51768 (May 31, 2005), 70 FR 33250 (June 7, 2005) (SR–Phlx–2005–35); 53938 (June 5, 2006), 71 FR 34178 (June 13, 2006) (SR–Phlx–2006–36); and 55666 (April 25, 2007), 72 FR 23879 (May 1, 2007) (SR–Phlx–2007–29). The program was subsequently expanded and made permanent in 2008. *See* Securities Exchange Act Release No. 57111 (January 8, 2008), 73 FR 2297 (January 14, 2008) (SR–Phlx–2008–01).

forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to modify Phlx Rule 1012 to expand the Program to allow the Exchange to select 55 individual stocks on which options may be listed at $1 strike price intervals and to expand the price range on which the Exchange may list such options.

Currently, the Program allows Phlx to select a total of 10 individual stocks on which option series may be listed at $1 strike price intervals. In order to be eligible for selection into the Program, the underlying stock must close below $50 in its primary market on the previous trading day. If selected for the Program, the Exchange may list strike prices at $1 intervals from $3 to $50, but no $1 strike price may be listed that is greater than $5 from the underlying stock's closing price in its primary market on the previous day. The Exchange may also list $1 strikes on any other option class designated by another securities exchange that employs a similar Program under their respective rules. The Exchange may not list long-term option series (''LEAPS'') at $1 strike price intervals for any class selected for the Program. The Exchange also is restricted from listing any series that would result in strike prices being $0.50 apart.

The Exchange now proposes to expand the Program to allow Phlx to select a total of 55 individual stocks on which option series may be listed at $1 strike price intervals, and to expand slightly the price range on which the Exchange may list $1 strikes, i.e., from $1 to $50. The existing restrictions on listing $1 strikes would continue, i.e., no $1 strike price may be listed that is greater than $5 from the underlying stock's closing price in its primary market on the previous day, and Phlx is restricted from listing any series that would result in strike prices being $0.50 apart.

As stated in the Commission order that initially approved Phlx's Program and in subsequent extensions and expansions of the Program,[5] Phlx believes that $1 strike price intervals provide investors with greater flexibility in the trading of equity options that overlie lower price stocks by allowing investors to establish equity options positions that are better tailored to meet their investment objectives. Indeed, member firms representing customers have repeatedly requested that Phlx seek to expand the Program in terms of the number of classes on which option series may be listed at $1 strike price intervals. The Exchange notes that current market conditions, in which the number of securities trading below $50 has increased dramatically, further warrant the expansion of the Program.

The Exchange is also proposing to set forth a delisting policy. Specifically, the Exchange would, on a monthly basis, review series that were originally listed under the Program with strike prices that are more than $5 from the current values of the options classes in the Program. The Exchange would delist series with no open interest in both the put and the call series having a: (i) Strike higher than the highest strike price with open interest in the put and/or call series for a given expiration month; and (ii) strike lower than the lowest strike price with open interest in the put and/or call series for a given expiration month.

Notwithstanding the proposed delisting policy, Phlx could grant member requests to add strikes and/or maintain strikes in certain options classes in series eligible for delisting.

Further, in connection with the proposed delisting policy, if the Exchange identifies series for delisting, the Exchange shall notify other options exchanges with similar delisting policies regarding eligible series for listing, and shall work with such other exchanges to develop a uniform list of series to be delisted, so as to ensure uniform series delisting of multiply listed options classes. Phlx expects that the proposed delisting policy will be adopted by other options exchanges that amend their rules to employ a similar expansion of the Program.

With regard to the impact on system capacity, Phlx has analyzed its capacity and represents that it and the Options Price Reporting Authority (''OPRA'') have the necessary systems capacity to handle the additional traffic associated with the listing and trading of an expanded number of series as proposed by this filing.

The Exchange believes that the Program has provided investors with greater trading opportunities and flexibility and the ability to more closely tailor their investment strategies and decisions to the movement of the underlying security. Furthermore, the Exchange has not detected any material proliferation of illiquid options series resulting from the narrower strike price intervals. For these reasons, Phlx requests an expansion of the current Program.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[6] in general, and furthers the objectives of Section 6(b)(5) of the Act[7] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The Exchange believes that expanding the current $1 Strike Program will result in a continuing benefit to investors by giving them more flexibility to closely tailor their investment decisions in greater number of securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and

(iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b-4(f)(6) thereunder.[9]

The Exchange has asked the Commission to waive the operative delay to permit the proposed rule change to become operative prior to the 30th day after filing. The Commission has determined that waiving the 30-day

[5] *See supra* note 3.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. Phlx has met this requirement.

operative delay of the Exchange's proposal is consistent with the protection of investors and the public interest because such waiver will enable the Exchange to implement its proposed expansion of the Program contemporaneously with other exchanges,[10] and respond to increased customer demand for $1 strikes without delay.[11] Therefore, the Commission designates the proposal operative upon filing. The Commission expects that the Exchange will continue to monitor the trading volume associated with the additional options series listed as a result of this proposal and the effect of these additional series on market fragmentation and on the capacity of the Exchange's, OPRA's, and vendors' automated systems.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–Phlx–2009–21 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2009–21. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–Phlx–2009–21 and should be submitted on or before April 14, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

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[10] *See* Securities Exchange Act Release No. 59587 (March 17, 2009) (SR–ISE–2009–04, SR–CBOE–2009–001, SR–NYSEArca–2009–10, and SR–NYSEALTR–2009–11) (Order Granting Accelerated Approval of Proposed Rule Changes, as Amended, to Expand the $1 Strike Program).

[11] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59587; File Nos. SR–ISE–2009–04, SR–CBOE–2009–001, SR–NYSEArca–2009–10, and SR–NYSEALTR–2009–11]

Self-Regulatory Organizations; International Securities Exchange, LLC; Chicago Board Options Exchange, Incorporated; NYSE Arca, Inc.; and NYSE Alternext US LLC; Order Granting Accelerated Approval of Proposed Rule Changes, as Amended, To Expand the $1 Strike Program

March 17, 2009.

I. Introduction

Four options exchanges filed with the Securities and Exchange Commission (''Commission'') proposed rule changes pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder[2] to expand the $1 Strike Program. Specifically, the International Securities Exchange, LLC (''ISE'') submitted its proposal on January 21, 2009;[3] the Chicago Board Options Exchange, Incorporated (''CBOE'') submitted its proposal on January 23, 2009;[4] NYSE Arca, Inc. (''NYSE Arca'') submitted its proposal on February 10, 2009; and NYSE Alternext US LLC (''NYSE Alternext'') submitted its proposal on February 10, 2009. The proposals submitted by ISE, CBOE, NYSE Arca, and NYSE Alternext (each an ''Exchange'' and collectively, the ''Exchanges'') are substantively identical. The proposals were published for comment in the **Federal Register** on February 19, 2009.[5] The Commission received one comment in response to CBOE's proposal.[6] This order approves the proposed rule changes, as amended in the cases of ISE and CBOE, on an accelerated basis.

II. Description of the Proposals

The $1 Strike Program currently allows each Exchange to select a total of 10 individual stocks on which option series may be listed at $1 strike price intervals. To be eligible for inclusion in the Program, an underlying stock must close below $50 in its primary market on the previous trading day. For each stock selected for the Program, each Exchange may list strike prices at $1 intervals from $3 to $50, but no $1 strike price may be listed that is greater than $5 from the underlying stock's closing price in its primary market on the previous day. Each Exchange also may list $1 strikes on any other option class designated by another securities exchange that employs a similar program under their respective rules. The Exchanges may not list long-term option series at $1 strike price intervals for any class selected for the program. Each Exchange is restricted from listing any series that would result in strike prices being $0.50 apart.

Each Exchange has proposed to amend its rules to expand the $1 Strike

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] ISE filed Amendment Nos. 1 and 2 to its proposal on February 9, 2009 and February 10, 2009, respectively.

[4] CBOE filed Amendment No. 1 to its proposal on February 4, 2009.

[5] *See* Securities Exchange Act Release Nos. 59377 (February 10, 2009), 74 FR 7719 (SR–ISE–2009–04); 59378 (February 10, 2009), 74 FR 7711 (SR–CBOE–2009–001); 59395 (February 11, 2009), 74 FR 7710 (SR–NYSEArca–2009–10); and 59394 (February 11, 2009), 74 FR 7722 (SR–NYSEALTR–2009–11).

[6] *See* Letter to Secretary, Commission, from Thomas R. Keyes III, CPA, J.D., dated February 21, 2009, regarding SR–CBOE–2009–001.